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Case No: 04-1144

In the

Supreme Court of the United States

KELLY AYOTTE, ATTORNEY GENERAL
OF NEW HAMPSHIRE

Petitioner

v.

PLANNED PARENTHOOD OF NORTHERN
NEW ENGLAND, CONCORD FEMINIST
HEALTH CENTER, FEMINIST HEALTH
CENTER OF PORTSMOUTH,
AND WAYNE GOLDNER, M.D.

Respondents

On Petition for Writ of Certiorari
To The United States Court of Appeals
For The First Circuit

BRIEF OF THOMAS SHARPE, M.D. AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

THOMAS SHARPE, M.D.
P.O.B. 127
Gouverneur, New York 13642
Tel: (315) 287-7553

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STATEMENT OF INTEREST OF AMICUS

No counsel for any party authored any portion of this brief. No persons other than the amicus curiae made a monetary contribution to the preparation and submission of this brief. The written consents of the parties will be filed with the Clerk of the Court pursuant to Supreme Court Rule 37.3

Amicus is former Director of Adolescent Obstetrics at two major New York University Hospitals. Former Director of Obstetrics and Gynecology of E.J. Noble Hospital, Gouverneur, NY., where amicus conducted the practice that was known to carry the highest number of pregnant adolescents in the state to delivery of babies. Amicus served as prosecution witness for the New York County District Attorney for child sexual abuse cases Amicus believes that its view will complement the brief of the Respondent and assist the Court in the resolution of issues.

SUMMARY OF ARGUMENT.

The states of the Union in the spirit of Federalism maintain an Abortion Surveillance - United States, With the CDC being the executor. All states participate in the surveillance with the exception of Alaska California and New Hampshire.
With the Supreme Court being the principal forum of abortion regulation, the Abortion Surveillance- United

States system works under the Supreme Court's implied authority.

The non participants in the Surveillance flout the Court's implied authority. A state like New Hampshire outside of the surveillance should not ask for the intervention of the Court, whose authority it flouts.

Adolescent obstetricians will not be able to evaluate the effects of the law, New Hampshire proposes because there will be no objective reports at their disposal.

ARGUMENT.

During the current controversy a father broke into the media. The father complained, that his mentally disabled daughter had two abortions in New Hampshire without his or his wife's knowledge. Names and the nature of mental disease was not released.

New Hampshire Parental Notification Prior to Abortion Act (N.H. REV. STAT. ANN. #132:24-28) serves the complaining father well. It has a judicial bypass and that has a keystone: demonstrated maturity. The complainant father must be satisfied, it won't happen again to his mentally challenged daughter.

Or would it? Judging from the history presented about this family, their daughter is out of adolescence by now. So on the day this notification law is ruled constitutional the girl might have a third (enforced) abortion because she would not be protected anymore by the new law.

What do adolescent obstetricians say?

1. NEW HAMPSHIRE IS WAY BEHIND OTHER STATES IN PROTECTING WOMEN UNDERGOING OR CONSIDERING ABORTION.

Other than the proposed notification law New Hampshire does not provide even rudimentary protection for women considering abortion.

New Hampshire does not have informed consent law, New Hampshire is far behind other states in assuring abortion clinic regulations which implement the certification and licensing of abortion clinics, New Hampshire does not have a law restricting to licensed physicians the performance of abortion, the state simply does not have a position on on the question of fetal viability.

The State of New Hampshire does not ensure complete information on the alternatives to abortion and the availability of public assistance to help women who want to carry their pregnancies to term.

For a state lacking in ground work to provide safe abortions it is not ripe to bring down rulings from this Court that will effect all states.

In neighboring Pennsylvania the judicial bypass caused considerable delay at least at the beginning after US v. Casey was decided in the early 90-s. Physicians complained that court personnel simply did not understand what their role and the role of the court is in the abortion regulation. There were complaints about delays and several reference to loss of time forcing performance of the second trimester abortion instead of the less risky and cheaper procedure in the first trimester.

Sharpe rarely performed abortions during his time in E.J. Noble Hospital, Gouverneur, NY. All those cases were complicated by medical disease, and all abortions were performed in the hospital. The girls- all minors- were brought into the hospital by their mothers, who waited for them during the procedure.

Should there be a mental complication, an adolescent psychiatrist should be consulted.

If the legislature of a state decides that a law is necessary to protect the rights of mentally challenged minors, and their parents, that state should first review its Mental Hygiene Laws and insert whatever law is needed. Such an amendment of mental hygiene laws would be very unlikely target of constitutional challenge.

New Hampshire aimed for more and from the position of the unknown and non communicating lifted into the national spotlight without cooperating with other states.

New Hampshire should consult the CDC Abortion Surveillance - United States for 2001.

Figure 4. of the Surveillance indicates that 15% of minors in the under 15 years of age had late after 15 weeks- abortion 45% had abortion between 9-15 weeks and only 35 % had early abortion before 9 weeks. in the mature group the late abortion was 5%, the 9-15 weeks abortion 35% and the early abortion 60 %. This is what the surveillance is good for, New Hampshire can recognize the minors' most sensitive point: obtaining abortions late. Any further delay in the performance of abortions on minors would further increase the shift towards late abortions, increased costs and complications.

New Hampshire is not willing to release this statistics for the rest of us, to follow the effects of the law.
The illustration on Appendix page 1. is from Abortion Surveillance -United States 2001. The percentage of women obtaining early or late abortions. The risk of obtaining late abortion is higher for the younger age group of minors. This is where the risk factor is, a further shift towards late abortions if further delays are caused. New Hampshire

does not release this information, there will be no way to monitor the effect of the new law.

2. PLANNED PARENTHOOD OF S. PA V. CASEY ALONE IS SUFFICIENT TO REVIEW THE CASE

Planned Parenthood of S. Pa V. Casey, 505 U.S. 833, (1992) has a saving domain finding that just because a law makes practicing a right more difficult the law is not necessarily unconstitutional.

Should the Court find Salerno's no set of circumstances governing (US v. Salerno 481 U.S. 739, 1987) A law the effects of which can not be monitored should fail under this standard too

3. NEW HAMPSHIRE FIRST SHOULD LICENSE ABORTION CLINICS.

A state like New Hampshire where abortion clinics need no certification and licensing by the state should not set example for other states.

Compare with Pennsylvania law: 18 PA. Cons. Stat. Ann. #3215(a) - (c) Enacted 1998

New Hampshire should first restrict the performance of abortions to licensed physicians, because once again a state not setting any standards for the performance of a medical procedure should not set the example for the rest of the states.

Compare with Pennsylvania Law: 18 PA. Cons. Stat. Ann. 3203 (Enacted 1982; Last Amended 1990, 18 PA. Cons. Stat. Ann. #3204 (Enacted 1982; Last Amended 1990)

New Hampshire first should regulate certain aspects

5. THE PETITIONER'S CLAIM THAT THE LAW WOULD ASSIST PROSECUTION OF CHILD SEXUAL ABUSE

The claim that sexual abuse of minors would be easier to prosecute if the notification law is placed into effect is probably correct. Yet the Petitioners statements on this issue are conclusions everybody may draw, the concern and experience of the professional involved in these prosecution is nowhere felt reading the petition. Nor is any reference to adolescents who evade the laws. Amicus is a prosecution witness for child sexual abuse, and generally child abuse cases. Using adolescent witnesses at court, is a special science. For a basic reference we quote Stephen Ceci, Maggie Bruck: Jeopardy in the Courtroom, a Scientific Analysis of Children's Testimony. American Psychological Association, Washington D.C. 1995. To promote the prosecution of these sexual abuses more would be needed, from more experts more concern about the pitfalls, difficulties of these prosecutions. The conclusive statements of petitioner are less convincing..

The Pennsylvania Law provides exemptions for women victims of rape or incest to obtain abortion in a health facility owned or operated by a state entity; if an independent physician certifies that the procedure is necessary to preserve her life,

2. the pregnancy is the result of rape personally reported by the victim to law enforcement agency prior to the abortion, 3. the pregnancy is the result of incest personally reported by the victim to law enforcement agency or to child protective services prior to the abortion. 18 PA. Cons. Stat. Ann. #3215(a)-(c) (Enacted 1998)

The US Court of Appeals upheld the limitation of funding to cases of life endangerment, or rape or incest, holding in the same time that the independent physician certification and the non waivable 72 hour reporting requirement for rape and incest was unconstitutional.Elizabeth Blackwell Health Ctr, for Women v. Knoll 61 F. 3d 170 (3d Cir 1995) Cert. denied 516 U.S. 1093 (1996) Here New Hampshire is competitive with other states.

New Hampshire opened state funding for abortions in case of danger to life and in case of rape or incest. Even here, no information is given to women seeking abortion on these facts, although with such information more reliable support for prosecution of sexual abuse could be obtained. Once again the protection of women by the states in this complex field of sexual abuse would require more information about the petitioner's practices than the mostly conclusive statements of the petition reveal.

We should notice, that no sooner was the instant certiorari granted, than the launch of a fierce attack

against New Hampshire started in the media (The O'Reilly factor) upon the ground that New Hampshire does not have laws against child sexual offenders, tough enough when compared to other states.

CONCUSION.

Amicus agrees with the grating of Certiorari in this time for this vitally important question of adolescent pregnancy.

Amicus calls the Court's attention to the events surrounsing the New Hampshire Parental Notification Prior Abortion Act, and points to the lack of New Hampshire's participation in the Abortion Surbeillance - United States., and thus the lack of sound foundation for followw up on the effects of the law, should it be allowed to be enforced.

Amicus emphasizes the valiant concerns in the petition about prosecution of child sexual abuse, but in the same time emphasizes the complexity of such prosecvutions, which would require more than the conclusory statements in the petition.

Amicus recommends to the Court to affirm the First Circuit decision, holding that the petitioner has ground work to complete within the state, and within the federation of states, before stepping in front of this Court asking for decisions that would effect all states.

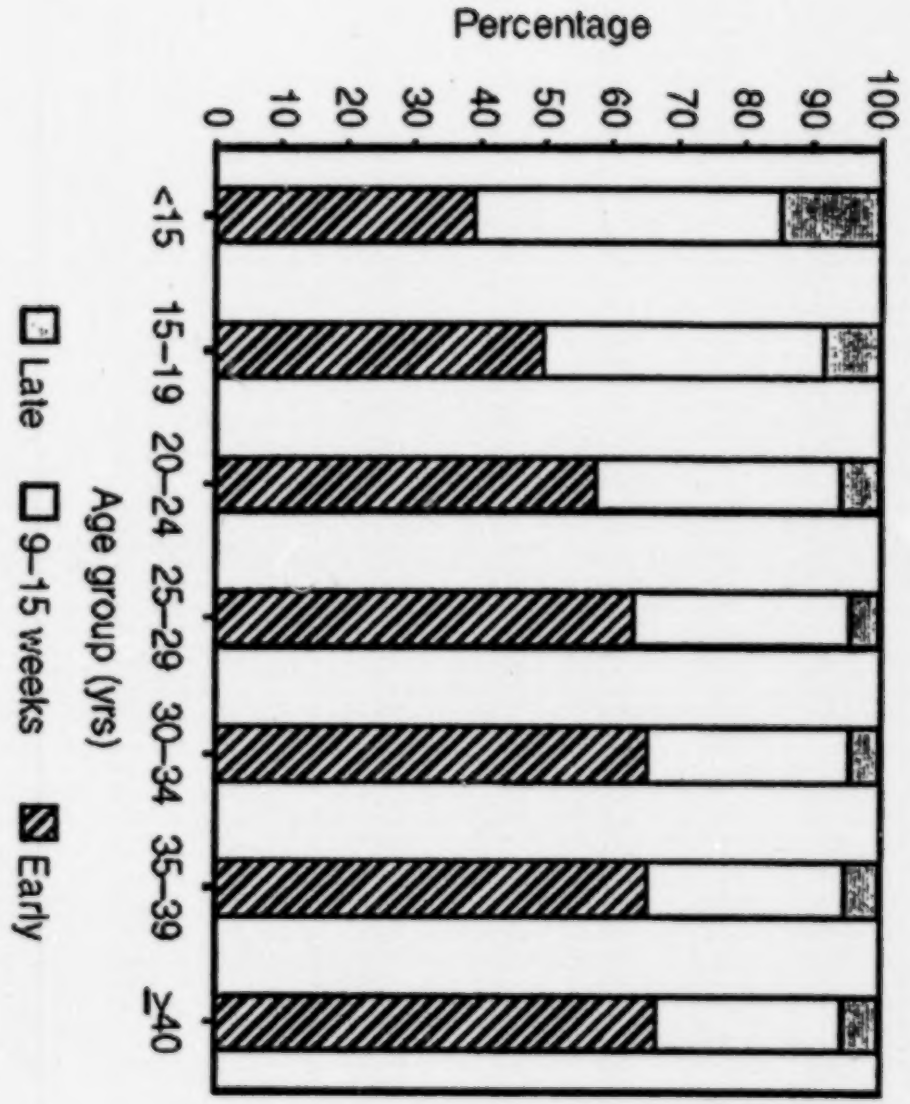
DATED: September 15, 2005

Respectfully submitted

Thomas Sharpe, MD

Thomas Sharpe, M.D.
Amicus Curiae
P.O.B. 127
Gouverneur, NY 13642
Tel: (315) 287 - 7553

APPENDIX I



Percentage of early or late abortions by age group of women. Abortion Surveillance - United States 2001

APPENDIX 2

NEW YORK STATE INTERFERES BY FORCE AND THREAT OF FORCE, WITH PREGNANT ADOLESCENTS WHO WANT TO DELIVER THEIR PREGNANCY.

In 1996 E.J. Noble Hospital Gouverneur, NY Maternity Service was closed without warning by the administration, board, medical staff, the State University of Syracuse, and the New York State Department of Health.

The distinguishing quality of this Maternity Service was that it delivered the highest number of adolescent pregnancies after carrying them to term in the State and that the highest pecentage of adolescents decided to keep and deliver their pregnancy, and the service attracted pregnant adolescents who wanted to deliver their babies from a wider area than the hospital's usual service area.

The intervention was violent and resulted in the death of dozens of babies and three mothers. The facts of this assault against pregnant adolescents can be viewed in Sharpe v. Conole et al. Petition for Writ of Certiorari 04 - 1130